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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 14

MAE WHEELER, et al.,
Appellants,

vs.

JOHN MONTGOMERY, Director of the STATE DEPARTMENT OF SOCIAL WELFARE, and RONALD BORN, General Manager of the SAN FRANCISCO CITY AND COUNTY DEPARTMENT OF SOCIAL SERVICES,
Appellees.

On Appeal from the United States District Court for the Northern District of California

Motion to Affirm

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 634

MAE WHEELER, et al.,
Appellants,

vs.

JOHN MONTGOMERY, Director of the STATE DEPARTMENT OF SOCIAL WELFARE, and RONALD BORN, General Manager of the SAN FRANCISCO CITY AND COUNTY DEPARTMENT OF SOCIAL SERVICES,
Appellees.

On Appeal from the United States District Court for the Northern District of California

MOTION TO AFFIRM

Appellees in the above entitled case move to affirm on the ground that the questions presented are so unsubstantial as not to warrant further argument.

STATUTES INVOLVED

California Welfare & Institutions Code sections 12200 and 12201 and 10950-10965 the latter providing for a fair hearing before the Director of the State Department of Social Welfare are printed in Appendix D to the Jurisdictional Statement. Regulation 44-325.43 of the Public Social Serv-

ices Manual effective April 1, 1968 prescribing the notice and hearing to be held prior to suspension, withholding or termination of aid is printed in Appendix A attached hereto. Attached hereto as Appendix B are the provisions of the HEW Federal Handbook of Public Assistance Administration as revised February 8, 1968 and September 30, 1968 governing fair hearings.

QUESTION PRESENTED

The question presented and considered by the court below is whether State regulation PSS 44-325.43, effective April 1, 1968 provides recipients of public assistance grants with the minimum standards of due process required by the Constitution.*

Summary of the Regulations Governing Pre-Termination of Welfare Benefits.

This regulation provides that prior notice and hearing be accorded to all recipients of categorical aids when tentative determination has been made by the county to withhold, suspend or terminate aid. The notice shall include a statement setting forth the proposed action, the ground therefore and what information is needed from the recipient in order to determine eligibility or to determine the correct amount of a grant, together with a statement of the recipient's right to be heard and thereby represented by counsel† (or other authorized representative) with a repre-

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*Appellants phraseology of the "Questions Presented" is misleading. It erroneously assumes that the regulation does not provide adequate notice, that the regulation provides no hearing on the factual issues underlying the decision to cut off assistance, that the recipient is not given full information of all evidence that the county agency has regarding ineligibility, and that the conference consists of nothing more than an "interview" with a case worker. Jurisdictional Statement p. 3.

†Regulation 22-001.5 Operations Manual, California Department of Social Welfare.

sentative of the County Welfare Department to the end that a fair determination can be made and to resolve, if possible, the question of eligibility. The regulation requires that prior and full disclosure be made by the county of the information upon which its proposed action is based; the notice is to be given only if the county has evidence indicating probable ineligibility which evidence is both substantial in nature and reliable in source. PSS 44-325.421.

STATEMENT

Appellant Mrs. Wheeler, as of August 30, 1967, received monthly old age benefits (OAS) in the amount of $113.95. Appellees received information that Mrs. Wheeler had received some $6,000 in insurance proceeds and had transfered the money to her grandson. The County agency reached the conclusion that the transfer was made to avoid discontinuance of welfare benefits and determined that Mrs. Wheeler's action rendered her ineligible for continued benefits because she had had more money than the maximum permitted while maintaining eligibility.* Old age security benefits were withheld as of September 1, 1967, however appellant received in addition to her social security check of $44.60 per month, general assistance (county aid) in the amount of $53.90 per month,† and was eligible for medical care during the entire period should the need have arisen until December 1, 1967, when old age security payments were restored by virtue of a temporary restraining

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*$1200 cash California Welf. & Inst. Code., § 11154.

†General assistance is "welfare aid". Appellant's statement that she "received no welfare aid whatsoever during the months of September, October and November, 1967" is not an accurate statement and the allegation that she subsisted for three months solely on $44.30 monthly social security check does not conform to the facts. J.S. 5. General assistance includes county hospital care and vendor payments for rent, food and clothing.

order issued by the court below on December 6, 1967*. Full welfare benefits were immediately restored and never disrupted because eligibility was confirmed by the Director on January 12, 1968 following a fair hearing on December 22, 1967.

The District Court Judge entered a class action order concluding that the prerequisites of Fed. R. Civ. P. 23(a) and 23(b)(2) were met. However, the court denied several motions for intervention stating, "Since December 6, 1967, plaintiff's counsel has made motions for intervention and a motion for modification of the temporary restraining order to include the entire alleged class. The court deems the showings made with respect to persons other than Mrs. Wheeler, inadequate to warrant further injunctive relief at this time."†

The court finding that the provision of 42 U.S.C. § 2281 were satisfied, ordered the convening of a three-judge court. Appellee Montgomery, Director of the State Department of Social Welfare then promulgated Regulation PSS-44-325.43. The Court below found that the regulation affords minimum due process at the pre-termination conference and therefore dismissed this action.

THE CONSTITUTIONAL QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

I. Introduction

The basic thrust of the complaint as it was first filed by appellants was to raise the question of whether at least some hearing prior to the termination of Old Age Assistance pay-

*Jurisdictional Statement, App. C. p. 14a.

†Jurisdictional Statement, App. B. p. 7a. Appellant's statement that the denial of motions to intervene were based on the ground that Mrs. Wheeler was an adequate representative of the class is not substantiated by the court's memorandum opinion. Jurisdictional Statement p. 5.

ments was constitutionally compelled. That claim was immediately conceded by appellees who promptly adopted a new regulation which provides to all public assistance recipients a written notice of the alleged grounds for ineligibility and a hearing prior to any determination of ineligibility for continued receipt of aid.*

Thus, the only issue which was presented and passed upon by the three-judge court below was whether the newly adopted regulation adequately affords due process protections to public assistance recipients. The court held the regulation to be constitutional. The court's examination of the constitutionality of the notice and hearing provisions contained in the newly adopted regulation was properly made in the light of the fact that (1) determinations as to the continued eligibility must be made promptly and no less often than once a month with respect to over one and one-quarter million public assistance recipients, and (2) the State of California provides recipients with the fair hearing process called for and required by both the Social Security Act and the provisions of state law (Welfare & Institutions Code §§ 10950-10965; the latter providing for judicial review.

Thus, it should be emphasized that the issue presented in this case is not whether a hearing prior to termination of aid is constitutionally required, appellees have conceded this constitutional requirement, but whether the hearing

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*Appellants refer to this regulation as providing only an "informal conference" Jurisdictional Statement pp. 10, 11, 12, 14, 15, 16 in the apparent belief that this label will render the regulation unconstitutional. Even the statutory fair hearing (adopted to conform to the requirements of the Social Security Act) "is conducted in an informal rather than formal court-type procedure in order to serve the best interests of the claimant, however, the hearing is to be subject to the requirements of due process." Sec. 6400(a) Federal Handbook of Public Assistance Administration App. B p. 13.

provided by the regulation meets those requirements. Appellants repeated references to the many cases in which the courts of this nation have recognized the due process requirements of a prior, timely and adequate hearing are irrelevant inasmuch as the basic principles enunciated by these cases have been fully recognized and accepted by appellees.* The court below determined that these principles have been properly implemented by appellees through the adoption of Regulation PSS-44-325.43.

II. What Is Due Process Depends on Circumstances.

What is due process is a flexible concept dependent on the particular circumstances.

"The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *"Cafeteria and Restaurant Workers etc. v. McElroy,* 367 U.S. 886, 895 (1961) 'Due process', unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Joint Anti-Fascist Comm. v. McGrath,* 341 U.S. 123, 162-163 (1951) (concurring opinion)

Thus it is important to place the notice and hearing procedure provided for in Regulation 44-325.43 in its correct factual and legal surroundings.

There are approximately 1,276,000 recipients of the various categorical aid programs† in California. County welfare departments are involved in making an enormous number of decisions daily respecting continued eligibility—and thus must develop a rapid method of fairly determining

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*Jurisdictional Statement pp. 8, 9, 10.

†Welfare programs partially financed by the federal government.

whether to suspend, terminate and withdraw public assistance grants to one and one-quarter million recipients. The number of determinations required and the need for an expeditious and fair review of these determinations are important factors in assessing the constitutional adequacy of the regulation.

In addition it must be recognized that following the informal hearing provided for by the regulation there is readily available to each aggrieved recipient the statutory fair hearing procedure* followed by a court review of that administrative decision.† The hearing provided by the regulation does not purport to and was never designed to be a substitute for or supplant the statutory fair hearing process. Thus, criticism of the regulatory hearing based upon the citation of cases dealing with federal or state full-scale trial type administrative actions taken pursuant to the Federal Administrative Procedure Act are quite inapposite. Appellants, for example, cite cases involving the type of record required by federal courts to review full scale elaborate and lengthy hearings by the Interstate Commerce Commission.‡ The implied effort to equate the kind of a record needed to review an I.C.C. hearing with the kind of problems here involved demonstrates a total misapprehension of the nature of the issues presented in this case. The due process requirements are different because the scale of the problems, the nature of the problem presented and the time needed for a resolution of the problems differ. The regulatory hearing provided by Reg. PSS-44-325.43 is plainly designed to reach a fair determination expeditiously.

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*California Welf. & Inst. Code §§ 10950 et seq.

†California Welf. & Inst. Code § 10962.

‡Jurisdictional Statement page 14.

It is in the interests of the recipient, as well as the government, that there be this expeditious and informal process.

Appellants respectfully suggest that the Reg. 44-325.43 provides due process protections far superior to those found to be constitutionally adequate in *Knight v. State Board of Education,* 200 F. Supp. 174, 178 (M.D.Tenn. 1961) and *Dixon v. Alabama State Board of Education,* 294 F. 2d 150 (5th Cir. 1961) *cert. den.* 368 U.S. 930;

It should be noted that these relief allowances are not pensions nor are they intended to be paid on a long time basis once eligibility for the first month is established. They are intended to relieve need while that need exists and no longer than it continues to exist. To require continued payment during the pendency of a trial type administrative hearing and until possible judicial review becomes final is to pervert the purpose and objective of this legislation.

The regulation gives the recipient reasonable notice and opportunity to ascertain the evidence pointing to ineligibility and to point to weaknesses or countervailing evidence. If there is still disagreement the recipient is still entitled to a judicial type hearing.

III. HEW's Fair Hearing Requirement.

Appellants' correctly state, page 16, Jurisdictional Statement,

> "Under HEW regulations every state welfare plan must contain certain provisions for a fair hearing: review of local determination by an impartial official of the state welfare department; complete and effective notice; the decision to be based solely on the evidence adduced at the hearing; adequate time for discovery and inspection; opportunity to question or refute testimony or evidence and a prompt decision."

Appellees do not dispute the fact that California provides all of this. Appellants, however, proceed to the following non-sequitor, "There is nothing in the HEW regulations which requires the fair hearing to be held after termination of assistance."

The answer in brief is that there is nothing in the HEW regulations which requires the fair hearing to be held before termination of assistance.*

IV. The Pre-termination of Aid Hearing Meets Due Process Requirements for Suspension or Withholding of Welfare Benefits.

Appellants assert various grounds for contending that the regulation does not meet minimum due process standards. Before discussing these various points, it should be made clear that even when due process requires a trial type of hearing, the relaxation of one or more attributes of such a hearing has been permitted. *U.S. v. Nugent,* 346 U.S. 1 (1953); *Norwegian Nitrogen Co. v. U.S.,* 288 U.S. 294 (1933); *Elder v. U.S.,* 202 Fed. 2d 465, (9th Cir. 1953); *cf. Williams v. New York,* 337 U.S. 241 (1949)

A. Appellants' first attack on the regulation is that the county agency acts as judge, jury and prosecutor. This time-worn attack on administrative agency hearings repeatedly has been rejected by the courts.

Even in full-scale adjudicatory hearings, it has been held without equivocation that it is not improper for an agency to sit in judgment of cases brought as a result of investigation by its own investigators and presentation by its own legal staff before an employee of the agency in face of the charge it acts as "judge, jury and prosecutor". *Marcello v. Bonds,* 349 U.S. 302, 311 (1955); *Federal Trade Comm'n. v. Cement Institute,* 333 U.S. 683, 700-703 (1948) *Pangburn v.*

*Withdrawal of Public Welfare: The Right to a Prior Hearing, 76 Yale L.J. 1234, 1236 f. 10 (1967)

C.A.B., 311 Fed. 2d 349, 356 (1st Cir. 1962); *Holt v. Raleigh City Board of Education*, 265 Fed. 2d 95, 98 (2d Cir. 1959) *cert. den.* 361 U.S. 818.

B. Appellants' second attack on the regulation is directed to the timeliness of the notice. But under the circumstances it is reasonable and timely.

The regulation provides that the recipient shall be notified in writing "immediately upon an initial decision being made". Written notice is required to be given *in no case less than* three mail delivery days prior to the usual delivery date of the warrant. Concern that the notice be delivered is underlined by the requirement that "the county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel."* The contents of the notice are set forth in the regulation, are discussed supra, and need not be repeated here.

The regulation provides that upon receipt of such notice the recipient (and his authorized representative, e.g. an attorney should he choose†) may meet with his case worker, an eligibility worker, or another responsible person in the county department, at a specified time and place or during a given time period which shall not be more than three days. The last day on which a hearing must be held is obviously one day prior to the usual delivery date of the warrant. The fact that this deadline is provided does not mean that the hearing may not be held, should the recipient so desire it, prior thereto. The fact that the last day for a conference is but a day prior to the usual date of a delivery of a warrant is designed to accommodate the needs of the recipient rather than the county.

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*PSS-44-325.43.

†Regulation 22-001.5 California Department of Social Welfare Operations Manual.

Notice of charges of student misconduct received 2 days before the disciplinary hearing was held to be adequate and timely by the court in *Jones v. State Board of Education,* 279 F. Supp. 190, 199 (M.D. Tenn. 1968). The court in *Jones* pointed out that in *Due v. Florida A. & M. University,* 233 F. Supp. 396 (N.D. Fla. 1963) "a letter was read to the students for the first time at the hearing stating the charge against them. This was the only notice of the charge that the plaintiffs were afforded, yet the court held the notice to be both adequate and timely."

C. Burden of proof is unchanged by the regulation.

Appellants next assert that the regulation places the burden of proof on the recipient to "re-establish eligibility" at the hearing. The phrase "re-establish eligibility" cannot properly be interpreted as constituting an effort to shift the formal and legal concept of burden of proof. A realistic assessment of the process will make it apparent that by the time the county has sent the notice it has made an initial but still tentative determination to withhold an aid payment.

The Federal District Court in *Jones,* 279 Fed. Supp. at 202, disposed of the same contention by stating, "This phase of the plaintiffs' argument resolves itself basically into an unfounded argument of semantics brought about by the use of the word 'readmit' by the F.A.C."

The regulation itself speaks of giving the notice "immediately upon the initial decision being made to withhold" and the same regulation talks of the need to provide such notice of an initial decision to withhold "when further investigation is necessary to determine continuing eligibility." This is further underlined by the language that aid payments may not be withheld unless the county has evidence "which is both substantial in nature and reliable in source

indicating probable ineligibility." This language should be compared to the notice requirements of *Thorpe v. Housing Authority,* 386 U.S. 670 and *Dixon.*

D. Appellants' demands for a full record, court reporter, findings of fact, and discovery go completely beyond due process requirements and call for a premature judicial type review.

Although never once alluded to in the briefs or arguments presented to the court below, appellants now casually "up the ante" by including in the procedures they assert are constitutionally required a demand for a court reporter*, written findings of fact and conclusions of law and opportunity for discovery. There is no more merit to these demands than there is to appellants' initial contention that a formal record need be made of the evidence adduced at the hearing provided for in the regulation.

In *Due v. Florida A. & M. University,* 233 F. Supp. 396, 403 (1963), the court held due process was satisfied in that:

> "There was notice to each of these plaintiffs, the charge was made explicit, and each was afforded full opportunity to be heard, and, in fact, was heard to the point where each said he had nothing more to say.
>
> "A fair reading of the Dixon case shows that it is not necessary to due process requirements that a full scale judicial trial be conducted by a university disciplinary committee with qualified attorneys either present or formally waived as in a felonious charge under the criminal law. There need be no stenographic or mechanical recording of the proceedings."

No useful purpose would be served by making such a record since it is clear that no administrative or judicial review is contemplated. The statutory fair hearing is not an appellate

*The fair hearing procedure under Welf. & Inst. Code sec. 11950 et seq. is mechanically transcribed; no court reporter is furnished. California Welf. & Inst. Code § 10956.

proceeding, it is a de novo hearing, the record of which is subject to judicial review. Neither *Dixon* nor *Thorpe* hint that a record of the administrative conference is required.

E. Confrontation and cross-examination are not essential to "due process" at the time of and under the circumstances of these proceedings.

Appellants' final ground for asserting that the regulation is constitutionally deficient is the failure to afford the recipient the right "to confront and cross-examine". This alleged defect is also without merit. The court in *Dixon* expressly rejected the right to cross-examine witnesses (294 F.2d at 159). Obviously, the housing authority-tenant informal conference in *Thorpe* made no provision for confrontation and cross-examination. Nor was such condition considered essential in *Knight v. State Board of Education,* 200 F. Supp. 174, 178 (1961). In *Knight* the court concluded that "the rudiments of fair play and the requirements of due process vested in the plaintiffs [suspended students] the right to be forewarned or advised of the charges to be made against them and to be afforded an opportunity to present their side of the case."

In *Londoner v. Denver,* 210 U.S. 373, 386 (1908), cited by appellants for the proposition that hearings must be timely and adequate* concerned the right of a tax payer to be heard before a tax became irrevocably fixed, this Court held "[He] who is entitled to it [a hearing] shall have the right to support his allegations by argument however brief, and, if need be, by proof however informal." This is precisely what the regulation affords appellants.

V. Thorpe and Dixon Do Not Sustain Appellants' Position

Appellants place primary reliance on *Thorpe v. Housing Authority of the City of Durham,* cert. granted 385 U.S.

*Jurisdictional Statement p. 8.

967, remanded 386 U.S. 670, cert. granted 390 U.S. 940. They state that "The question here is substantially the same as in *Thorpe* . . ."* The three judge court was well aware of the litigation in *Thorpe* and that when this Court scheduled the matter for reargumnt it confined its concern to the question of the retroactivity of the Housing Authority regulation. It is thus fair to state that implicit in this court's action in *Thorpe* was an acceptance by it of the constitutional adequacy of the notice and hearing provisions accorded by the Housing Authority to housing authority tenants.

In *Thorpe* this Court plainly indicated that the constitutional requirements of due process would be met if a housing authority tenant, when given a notice to vacate, was given the specific reasons therefor—including a detailed statement of the tenant's action which resulted in the determination that eviction should be instituted and an opportunity "in a private conference or other appropriate manner" at which the tenant is told "the reason for the eviction and given an opportunity to make such reply or explanation as he may wish." HUD circular February 7, 1967. The North Carolina Supreme Court, in affirming its original decision after remand (157 S.E. 2d at 147), held that the procedure developed by the Federal Housing Authority did not apply retroactively.

Petitioner in *Thorpe* did not contend that due process required more than that the housing authority tenant "be given a fair opportunity to be heard to contest the authority's action . . ."†

All that petitioner Thorpe urged was that the housing authority circular "should be interpreted so as to include the right to be heard in person or by counsel at a hearing

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*Jurisdictional Statement page 7.

†Brief for Petitioner p. 13 No. 1003 October Term 1967.

or conference and also to include fair opportunities to challenge the grounds of the local authority's proposed action, to probe the facts relied upon by the authority, and to present the tenant's own version of the facts. The circular should also be interpreted to include the requirement that the authority's decision be premised on the facts presented to it."* *All of these things are* not only implicit but *explicit* in the regulation adopted by appellees.

The notice and hearing procedures adopted by the State of California appellees provide due process procedures immeasureably superior to those found, or implicitly assumed to be, constitutionally adequate by the Fifth Circuit Court in *Dixon v. Alabama State Board of Education,* 294 F. 2d 150 cert. den., 368 U.S. 930.

In developing the guide lines in *Dixon* the court had fewer problems to resolve than did the appellees in developing the regulation. The court in *Dixon* did not have to provide a process that would involve 1,276,000 individuals (i.e., the number of welfare recipients in California) nor the number of decisions necessarily involving those individuals. Nor did the procedure outlined by the *Dixon* court have to fulfill the need for as an expeditious resolution of the problems as are needed in handling over 1¼ million welfare recipients.

Yet with fewer cases and more time available the Circuit Court in *Dixon* laid down guide lines far less onerous than are required by the state regulation. To denominate this regulation as providing "only for an informal conference with caseworker personnel of the county department" as appellants do† is to unduly minimize the due process protections afforded by the regulations.

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*Id. p. 15.

†Jurisdictional Statement p. 1.

The procedures provided for by the regulations are a far cry from the ex parte and arbitrary action claimed by appellants. The regulation requires far more than the pre-eviction procedure passed upon in *Thorpe* and the informal interview with an administrative authority standard set in *Dixon*. It provides a due process hearing fully attuned to the circumstances. It provides a hearing at which a fair determination can be made and thus is the essence of due process.

CONCLUSION

For the above reasons, appellees move that the order of the three judge district court dismissing this action be affirmed.

Dated: November 22, 1968

Respectfully submitted,

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(Appendices Follow)

44-325 CHANGES IN AMOUNT OF PAYMENT (Continued)

.43 *Notification to Recipient When Aid Payment Is Withheld*

The recipient, the parent or other person responsible for the child in *AFDC*, shall be notified, in writing, immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient. The county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel. Form ABCD 239, Notice of Action, or a substitute form, may be used for this purpose. Every notification shall include:

.431 A statement setting forth the proposed action and the grounds therefor, together with what information, if any, is needed or action required to reestablish eligibility or to determine a correct grant.

.432 Assurance that prompt investigation is being made; that the withheld warrant will be delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the witholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434 below).

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified

for medical assistance during the month aid is withheld.

.434 A statement that the recipient, parent, or other person may have the opportunity to meet with his caseworker, an eligibility worker, or another responsible person in the county department, at a specified time, or during a given time period which shall not exceed three (3) working days, and the last day of which shall be at least one (1) day prior to the usual delivery date of the warrant, and at a place specifically designated in order to enable the recipient, parent, or other person:

(a) To learn the nature and extent of the information on which the withholding action is based;

(b) To provide any explanation or information, including, but not limited to that described in the notification pursuant to Section .431 above;

(c) To discuss the entire matter informally for purposes of clarification and, where possible, resolution.

Appendix B

H.T. No. 140

HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION

Part IV Eligibility, Assistance, and Services

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6000. *Fair Hearings*

6100. *Provisions of the Act*

(a) Sections 2(a)(4), 402(a)(4), 1002(a)(4), 1402(a)(4), and 1602(a)(4) read as follows:

"A state plan . . . must . . .

"provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for . . . [aid or assistance under the plan] is defined or is not acted upon with reasonable promptness."

(b) Sections 6(a)(5), 406(b)(2)(E), 1006(5), 1405(5), and 1605(a)(E) authorize Federal financial participation in protective payments "but only with respect to a State whose State plan . . . includes provision for . . .

"opportunity for a fair hearing before the State agency on the determination . . . [or need for protective payment] for any individual with respect to whom it is made."

6200. *Requirements for State Plans*

A State plan for OAA, AFDC, AB, APTD, or AABD must provide that:

(a) The State agency will be responsible for fulfillment of fair hearings provisions, and shall specify the hearing authority.

(b) An opportunity for a fair hearing before the State agency will be granted to any individual requesting a hearing because his claim for assistance is denied, is not acted upon with reasonable promptness, or because he is aggrieved by any other agency action affecting his receipt or termination of assistance, or by agency policy as it affects his situation.

(c) Decisions by the hearing authority, rendered in the name of the State agency, will be binding on

the State and local agency. The State agency will establish and maintain a method for informing, at least in summary form, all local agencies of all fair hearing decisions by the hearing authority, and the decisions will be accessible to the claimants, their representatives, and the public (subject to provisions relating to safeguarding public assistance information).

(d) The hearings will be conducted by an impartial authority (or officials) of the State agency.

(e) Hearing procedures will be issued and publicized by the State agency for the guidance of all concerned.

(f) Every claimant will be informed in writing at the time of application and at the time of any agency action affecting his claim
  (1) of his right to a fair hearing;
  (2) of the method by which he may obtain a hearing;
  (3) that he may be represented by others including legal counsel; and
  (4) of any provision for payment of legal fees by the agency.

(g) The hearing will be conducted at a time, date, and place convenient to the claimant, and adequate preliminary written notice will be given.

(h) When the hearing involves medical issues, a medical assessment other than that of the person or persons involved in making the original decision will be obtained and made a part of the record if the hearing officer or the appellant considers it necessary.

(i) The claimant or his representative will have the opportunity

(1) to examine all documents and records used at the hearing;

(2) at his option, to present his case himself or with the aid of others, including legal counsel;

(3) to bring witnesses;

(4) to establish all pertinent facts and circumstances;

(5) to advance any arguments without undue interference; and

(6) to question or refute any testimony or evidence.

(j) Prompt, definitive, and final administrative action will be taken within 60 days from the date of the request for a fair hearing. The claimant will be notified of the decision, in writing, in the name of the State agency and, to the extent it is available to him, of his right to judicial review.

(k) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency will make the corrected payments retroactively to the date the incorrect action was taken.

(l) The hearing officer's (or panel's) recommendation shall be based exclusively on evidence and other material introduced at the hearing. The verbatim transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the hearing officer's or panel's recommendations,

will constitute the exclusive record for decision by the hearing authority and will be available to the claimant at a place accessible to him or his representative at any reasonable time.

6300. *Criteria for the Administration of the Plans*

(a) The State agency establishes policies and procedures that carry out the purpose and provisions of this policy and that assure equity of treatment in relation to the laws and standards pertaining to assistance.

The State agency takes the necessary steps to see that there is uniformity in the application of agency policy in similar situations.

(b) A request for a hearing is considered as any clear expression (oral or written) by the claimant (or person acting for him, such as his legal representative, relative, or friend) to the effect that he wants an opportunity to present his case to higher authority. The freedom to make such a request is not limited or interfered with in any way, and agency emphasis will be on helping the claimant in submitting and processing his request, and in preparing his case, if needed.

(c) Opportunity for a fair hearing includes:

(1) Consideration of any action, or failure to act with reasonable promptness, on a claim for assistance which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and suspension or

discontinuance of assistance in whole or in part;

(2) Consideration of the agency's interpretation of the law, and the reasonableness and equitableness of the policies promulgated under the law, if the claimant is aggrieved by their application to his situation;

(3) Consideration of agency decisions regarding:

(i) Eligibility for assistance in both initial and subsequent determinations,

(ii) Amount of assistance or change in payments,

(iii) The manner or form of payments, including restricted or protective payments, even though no Federal financial participation is claimed, and

(iv) Conditions of payments, including work requirements.

(d) Provision is made for reasonable time in which to appeal agency action.

(e) Final administrative action is taken within the 60-day limit (IV-6200, item j), except that where the claimant requests a delay in the hearing in order to prepare his case or for other essential reasons, reasonable time is given and such extra time may be added to the 60 days.

(f) The agency does not deny or dismiss a request for a hearing except where it has been withdrawn by the claimant in writing or abandoned. A request for a hearing is considered abandoned only if neither the claimant nor his representa-

tive appears at the time and place agreed upon for the hearing, and if within a reasonable time after the mailing of an inquiry as to whether he wishes any further action on his request for a hearing, no reply is received by either the local or State agency.

(g) The hearing authority may be the highest executive officer of the State agency, a panel of agency officials or a hearing officer appointed for that purpose, but no person who participated in the local decision being appealed will participate in a final administrative decision on such case. The hearing authority is responsible for a final administrative decision in the name of the State agency on all issues that have been the subject of a hearing. The decision of the hearing authority is binding on the State and local agency. The State agency is responsible for seeing that the decision is carried out promptly.

Insofar as may be applicable, a decision in favor of the claimant applies retroactively to the date the incorrect action was taken, and also applies prospectively.

(h) The impartial official (or officials) of the State agency who is responsible for conducting the hearing has not been involved in any way with the action in question.

(i) The issuance of hearing procedures is in the form of rules and regulations, or in some other form in which they will be publicized.

(j) Written notification and, to the extent possible, oral explanation of the right to and procedure

for requesting a fair hearing are given at the time of application. Written notice, and oral explanation as necessary, are given at the time of any agency action affecting the claim for assistance, including change in or termination of assistance.

(k) Individuals are informed of their right to be represented at fair hearings by others. At his option, the claimant may be represented by legal counsel or by a relative, friend or other spokesman, or may represent himself.

(l) The convenience of the claimant is considered in setting the date, time, and place for the hearing. Notice is given in writing with adequate preliminary information about the hearing procedure necessary for his preparation for the hearing and effective presentation of his case. He is advised as to the use of witnesses and legal counsel or other representative, as well as any procedure or financial provisions for obtaining legal representation, including availability of fees for legal counsel from the agency.

(m) When an assessment by a medical authority, other than the one involved in the decision under question, is requested by the claimant, it is obtained, at agency expense, from a medical source satisfactory to the claimant. The hearing officer can also consider the physican's report in the record or can request additional evidence. The assessment of such medical authorities will be reported in writing or by personal testimony as an expert witness for the hearing record.

(n) The claimant or his representative has adequate opportunity to examine material that will be introduced as evidence prior to the hearing as well as during the hearing, to give all the evidence on points at issue he believes necessary without undue interference, to ask for substantiation of any statements made by others, and to present evidence in rebuttal.

(o) Non-record or confidential information which the claimant does not have an opportunity to hear or see is not made a part of the hearing record or used in a decision on the appeal. The hearing officer does not review the case record, or other material prior to the hearing unless such material is made available to the claimant or his representative.

6400. *Interpretation*

(a) *Opportunity for a Fair Hearing*

Fair hearing procedures, including the conduct of the hearing, are designed to assure the right of every claimant to demand and obtain a fair hearing. The claimant's freedom to request a hearing, whenever he believes that proper consideration has not been given to all the circumstances surrounding his claim, is a fundamental right and is not to be limited or interfered with in any way.

Since, under the Federal act and the State plan, every aggrieved claimant is entitled to the opportunity for a hearing, only the claimant may withdraw his request for a hearing and this is to be in the form of a written withdrawal.

Effective complaint and adjustment procedures, whereby corrective action may be easily requested and readily taken without the need for a hearing, are necessary, when indicated. Advance opportunity afforded the recipient to respond to questions which could result in change of grant or termination is a significant part of such procedures. So is written, and whenever practical, oral information of the reasons for change, denial, or termination. This is particularly important where the agency decision is based on judgmental factors or eligibility requirements that entail evaluative decisions on the part of workers, as compared to decisions based on non-debatable facts (such as receipt of OASI, death, etc.). However, the State and local agency adjustment procedures cannot be allowed to interfere with the hearing process.

The claimant's right to a hearing includes the privilege of presenting his case in any way he desires. Some will wish to tell their story in their own way, some will desire to have a relative or friend present the evidence for them, and still others will want to be represented by legal counsel. In many instances the recipient's position can best be presented by an attorney. In order for the claimant to obtain an attorney, legal fees may need to be provided by the State. Federal financial participation is available in meeting the cost of these fees. States are urged to provide payment for the services of an attorney, or refer recipients to attorneys otherwise available in the community, because of the

skill and knowledge of the legal profession in these matters. Furthermore, the claimant may bring any witnesses he desires to help him establish pertinent facts and to explain his circumstances.

The hearing is conducted in an informal rather than formal court-type procedure in order to serve the best interests of the claimant; however, the hearing is to be subject to the requirements of due process.

(b) *Publication of Hearing Procedures*

The publication of hearing procedures in the form of rules and regulations or a clearly stated pamphlet helps to emphasize the importance of the procedure. This material is useful to applicants and recipients or to others interested in their behalf. It contributes to the fairness of the hearing procedure, and emphasizes that there is "due process" in program administration affecting the right to public assistance.

(c) *Informing the Claimant of His Right to a Hearing*

Written notification of the right to a hearing may be on the application form and other forms routinely used by the agency which go to applicants and recipients, as well as an explanatory pamphlet distributed by the agency. Oral explanations should also be given regarding the policy on hearings at intake and at time of a change in eligibility.

The purpose of informing the claimant of his right to a hearing, in writing, and whenever practicable orally, is to assure that the claimant

fully understands this right. This right is further assured by the agency explaining the right to a hearing in understandable terms and in being helpful as needed in the preparation for and conduct of the hearing.

(d) *Convenience of the Claimant Considered*
The agency has not discharged its responsibility for a hearing unless it has taken all steps necessary to enable a claimant who requested a hearing to attend the hearing in person or to be represented by a person of his own choosing. If the hearing is to be held at a considerable distance from the locality of the claimant's residence, it may be necessary to provide for the transportation and other costs of the claimant, his representative, and his witnesses.

Notice to claimant as to the hearing being scheduled in his behalf includes information about the fair hearing as an informal administrative procedure, in which a dissatisfied claimant or his representative may present his grievance with the help of witnesses or legal representation to show why action or inaction in his case should be corrected by the State agency.

(e) *Impartiality of Official Conducting the Hearing*
The person conducting the hearing shall not have been connected in any way with previous actions or decisions on which the appeal is made. For example, a field supervisor who has advised the local agency in the handling of a case would be disqualified from acting as the hearing officer.

(f) *Impartiality of the Hearing Authority*

The hearing authority shall not have been directly connected with the agency action about which the claimant is appealing. For example, a State board member who has participated as a county board member or in another capacity in the local action on a case would disqualify himself from rendering a final decision on the particular case. This does not preclude the State director or administrative board from signing the decision in the name of the State agency, even though previously involved in the case.

(g) *Prompt, Definitive, and Final Action*

The hearing authority is responsible for rendering a conclusive decision. When the hearing authority is different from the hearing officer, such authority may adopt the recommendations of the hearing officer, or reject them and reach different conclusions on the basis of the evidence at hand, or refer the matter back to the hearing officer for a continuation of the hearing, because the materials submitted are insufficient to serve as the basis for a decision.

The State agency is responsible for assuring that the decision is carried out. Various methods, such as a report by the local unit to the State agency of action taken to carry out the hearing decision or follow-up by the State office staff, may be used. Remanding the case to the local unit for further consideration is not a substitute for "definitive and final administrative action."

The requirement for prompt, definitive, and final administrative action means that all requests for a hearing are to receive immediate attention and will be carried through all the steps necessary to completion. The requirement is not met if the State agency dismisses such requests for any reason other than withdrawal or abandoment of the request by the claimant.

The over-all time limit of 60 days between the date of the request for the hearing and the date of the final administrative action, will serve as one of the safeguards of prompt, administrative action. Detailed controls of individual steps in the hearing process, such as: time limits for accepting, forwarding, and acknowledging a request for a hearing, notice to the claimant, and date of the hearing will facilitate proper administration of the hearing process.

(h) *Opportunity to Examine the Official Record*
The record of the proceedings at the hearing, which constitutes the official record, is to be made available to the claimant or his representative to examine, if he desires. If any additional material is made a part of the hearing record, this, too, would be made available.

(i) *Judicial Review*
In some States, the right of judicial review may be prescribed by statute specifically authorizing review of the agency decision on the basis of the record of administrative proceedings. In other States, even in the absence of statutory provisions, a claimant may be able to invoke

the remedy of judicial review on the showing that the agency action was "unreasonable, arbitrary, or capricious." The content of the notice of decision, as regards judicial review, would depend upon the kind of remedy available in the State.

6500. *Federal Financial Participation*

Federal financial participation is available in:

(a) Payments made to carry out hearing decisions, or to take corrective action prior to the hearing, including corrected payments retroactively to the date the incorrect administrative action was taken.

(b) Payments of assistance continued pending a hearing decision.

(c) Payments of assistance within the scope of the federally aided public assistance programs made in accordance with a court order.

(d) Administrative costs necessary for:

(1) Carrying out the hearing procedures;

(2) Providing transportation and other costs for the claimant, his representative and witnesses to and from the place of the hearing;

(3) Fees for legal counsel; and

(4) Other costs, expenditures, and fees reasonably related to the hearing, including expenses involved in obtaining an additional medical assessment.